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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20540

M. H. Hall
Proc I

FILE: B-191074

DATE: March 7, 1978

MATTER OF: Mobility Systems, Inc.

DIGEST:

Protest against alleged restrictive specifications contained in Step I (request for technical proposals) of two-step procurement which would result in receipt of only one acceptable proposal is untimely and not for consideration since protest was filed well after the closing date for receipt of initial technical proposals. Fact that more than one acceptable proposal was received for Step II participation is irrelevant to and does not eliminate necessity for protesting on that basis prior to closing date and consideration as untimely protest is not warranted.

Mobility Systems, Inc. (Mobility), has protested against the making of any award under Defense Logistics Agency (DLA) request for proposals (RFP) No. 700-78-R-0650, issued by the Defense Construction Supply Center (DCSC), on December 22, 1977, for the installation of a Depot Integrated Storage and Retrieval System at DLA Depot, Richmond, Virginia.

The procurement was initiated pursuant to two-step advertising procedures on January 25, 1977, with the issuance by DCSC of a Step I request for technical proposals (RFTP) No. 77-1, having a March 21, 1977, closing date for receipt of unpriced technical proposals. On February 1, 1977, Mobility wrote to DCSC expressing its desire "to submit a technical proposal if the specifications were changed to eliminate the restrictive requirements [which would result in the receipt of only one acceptable proposal] but retain the intent and performance requirements." This resulted in an extension of time for the submission of technical proposals

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(Amendments 0001 and 0002) from March 21 to April 21, 1977. Mobility wrote another letter, dated March 10, 1977, noting the "constructive changes" in the specifications and requesting that some questions, concerning the intent of the specifications, be answered by DCSC. Then, on April 20, 1977, Amendment 0003 was issued and it, among other things, extended the closing date from April 21 to May 24, 1977. We are advised that there were two other amendments (0004 and 0005), which were based on technical comments from DCSC's engineers, that extended the closing date initially to July 20, 1977, and then to July 27, 1977. Subsequently, Mobility, even though dissatisfied with DCSC's amendments and believing that the specifications were still restrictive, but being "assured by DLA that there was more than one bidder who contended they were capable of providing the equipment required and that technical proposals were forthcoming from at least two suppliers," decided not to submit a technical proposal or protest against the specifications.

Two acceptable proposals were received, one from Clay Bernard Systems International, Ltd. (Clay), and the other from MB Associates (MB), and on October 21, 1977, the Step II solicitation (invitation for bids (IFB) No. DLA 700-78-B-0024), with bid opening scheduled for December 5, 1977, was issued to Clay and MB. MB decided not to submit a bid and withdrew from the competition. Consequently, DCSC, with only one acceptable proposal remaining, determined that negotiation with Clay was authorized pursuant to Armed Services Procurement Regulation (ASPR) sections 3-210.1 and 3-210.2(iii) (1976 ed.) and on December 22, 1977, converted the IFB, by amendment, to an RFP (No. 700-78-R-0650), with a January 6, 1978, closing date. We note that Clay submitted a price proposal and is presently negotiating with DCSC.

Essentially, Mobility's protest concerns the alleged restrictive specifications contained in RFTP No. 77-1. Mobility argues that had the restrictive specifications been corrected by DCSC, adequate competition would have been assured and the issuance of the sole-source procurement, which it believes cannot be substantiated, would not have occurred. It is our view, with respect to Mobility's reference to DLA

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assurances, that the Government cannot guarantee the number of bids that will be received pursuant to any solicitation. Moreover, the number of bids received does not change the content of a solicitation's specifications and, therefore, is irrelevant to and does not eliminate the necessity for a protest concerning allegedly unduly restrictive specifications which prevent a firm from competing.

Our Bid Protest Procedures (Procedures), 4 C.F.R. § 20.2(b)(1) (1977), state in pertinent part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to * * * the closing date for receipt of initial proposals shall be filed prior to * * * the closing date for receipt of initial proposals."

Furthermore, we have held in connection with two-step procurements that solicitation improprieties must be protested prior to the Step I closing date. 53 Comp. Gen. 357 (1973); Ken-Mar Machine and Health Equipment, Inc., B-188529, July 14, 1977, 77-2 CPD 26; Norris Industries, B-182921, July 11, 1975, 75-2 CPD 31.

However, Mobility suggests that, even though its protest may not have fully complied with the timeliness provisions of 4 C.F.R. § 20.2(b)(1) (1977), our Office should give Mobility's protest "extraordinary consideration on the merits * * *." Our Procedures do permit consideration of untimely protests where good cause is shown or where issues significant to procurement practices or procedures are raised. 4 C.F.R. § 20.2(c) (1977). The good cause exception generally refers to some compelling reason, beyond the protester's control, which prevented it from filing a timely protest. 52 Comp. Gen. 20, 23 (1972); Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256. The significant issue exception is limited to issues which are of widespread interest to the procurement community and is "exercised sparingly" so that the timeliness standards do not become meaningless. See Catalytic, Incorporated, E-187444, November 23, 1976, 76-2 CPD 445. We see nothing in the submission in this case to warrant invoking either exception.

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Based on the foregoing, we must regard Mobility's protest, filed with our Office on January 12, 1978, well after the date set for receipt of initial technical proposals (July 27, 1977) under Step I, as untimely and not for consideration on the merits.

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